Sectt. 11-27—30,006—26-11-

Law (General) (1932) Department

MS. SERIES.

G.O. No. 2972

DATED 11-8-1932

[Despatch Abstract.]

Legal assistance - Certain police officers in the South Kanara district - Filing of revision petitions in the High Court - Police Officers to make their own arrangements.

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C.F. 30.

LAW (GENERAL) **DEPARTMENT.**

11(1).32.

N.5

Received 30.11.1932 19 *Registered* 19

Subject.

Criminal Justice - C.C.89/32 on the file of the Sub Divisional Magistrate, Mangalore and C.C.35/32 on the file of Joint Magistrate, Coondapoor - Orders of overruling of preliminary objections - Revision petitions to High Court.

ENCLOSURES.
No. .....
.....
Spare copies .....

No. Ref.C.1-6252-32.

Station Mangalore, *Dated the* 8th July 1932

From (Name) Khan Bahadur J. Hussain, Bar-at-Law,
(Designation) District Magistrate of South Kanara.

To The Secretary to the Government of Madras,
Law (General) Department,
Madras.

Sir,

1 & 3.

I enclose herewith two Revision petitions sent to me by the District Superintendent of Police, South Kanara. The Revision petitions are those to be filed before the High Court against the orders of the Sub Divisional ------ Magistrate, Mangalore and the Joint Magistrate, Coondapoor disallowing the preliminary objections raised by the ----- petitioners who are Police subordinates that the cases --- against them should not be proceeded with for want of sanction of the Local Government as contemplated in ------ Section 132 C.P.C. on the ground that they were acting in

the lawful discharge of their duties in dispersing an unlawful assembly under Sections 127 & 128 C.P.C. As the petitioners are Police subordinates, I request that Government may be ---- pleased to request the Public Prosecutor, Madras to file the - petitions before the High Court and to appear on behalf of the petitioners.

9-7-32

District Magistrate.

Cir 10/97 12

In the High Court of Judicature, Madras.

Petitioners: (1) Khan Sahib M.S.Chamnad Sahib Bahadur, Inspector of Police, Mangalore Circle

(2) T.Ananda Rao, Sub-Inspector of Police Mangalore Town Station.

(Accused in C.C.No.89/32, on the file of the Sub Digisional Magistrate, Mangalore

Counter Petitioner : M.M.Rama Rao, Mangalore.

A 11

The petitioners pray for revising the order passed by the Sub Divisional Magistrate, Mangalore, on 11-6-1932.

2. Petitioners are the Circle Inspector and Sub Inspector respectively of Mangalore and as such as were acting in the lawful discharge of their duties in dispersing an unlawful assembly as contemplated in Section 127 and 128 of Chaper IX of the Criminal Procedure Code.

3. The counter petitioner was one of the members of the unlawful assembly and sustained injuries when the unlawful assembly was being dispersed under orders of the 1st petitioner.

4. The counter petitioner was produced before the sub-Divisional Magistrate as an accused the very next day but did not then complain against the petitioners. He complained several days later.

5. The petitioners sent a report to the District Superintendent of Police about the happenings the very day.

6. The Counter petitioner contends in his complaint that there was no unlawful assembly and has therefore laid the present complaint against the petitioners for having got him beaten.

7. The petitioners reported to the Dt. Superintendent of Police the very day about the presence of the unlawful assembly of which the counter petitioner was a member and its dispersal by force. The original report to the District Superintendent of Police was submitted to the Court with a prayer that the complaint should be dismissed as their action was under sections 127 + 128 of Cr.P.C and as such was falling under Sections 132 Cr.P.C and therefore sanction of the Local Government was necessary before the complaint was proceeded with, by the Sub-Divisional Magistrate, Mangalore. The Sub-Divisional

p.t.o.

Magistrate, has overruled the objection has passed over this report, attaching no value to it though the report was one made immediately after the alleged happenings and though it clearly mentions that there was an unlawful assembly - and that it was dispersed by force.

8. The Sub Divisional Magistrate, has dismissed the petition and wants to go on with the case and orders that he would dismiss the complaint if at any time, he considers that the petitioners acted under Sections 127 and 128 of Cr. P.C. This view practically means that the petitioners have to prove their case before the question of sanction is to be considered and hearing both the prosecution and defence evidence and then deciding whether the sanction of the Local Government is necessary or not.

9. The view is against the ordinary principles of Law as it means that the court assumes the prosecution to be true and wants the accused to prove their case first. If the view were conceded, the protection afforded to the Police Officers acting in the dispersal of unlawful assemblies by section 132 of the Criminal Procedure Code will become a nullity and all that would be required, would be for persons to file complaints against the Police and keep them continually in court as accused person.

10. The Sub-divisional Magistrate, makes capital of the fact that the petitioners in this connection charged the counter petitioner only for an offence under the Criminlal Law Amendment Act, for picketing. This has absolutely nothing to do with the point and is entirely irrelevant. The Police are not bound to charge all or any members of an unlawful assembly, nor is anything gained by the charging of large numbers of unimportant persons. In this instance the sole important person was charged for the offence in connection with which the petitioners maintain the unlawful assembly occurred.

11. It is therefore prayed that the order dismissing the petition may kindly be revised and the complaint thrown out for want of sanction, of the Local Government as required by section 132 of the Cr.P.C.

Mangalore:
3rd July 1932.

Sd/----------
Petitioners.

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In the High Court of Judicature, Madras.

C.CNo. 35/32, on the file of Joint Magistrate, Coondapoor.

Petitioners:- 1. G.C.Saldanha, Sub Inspector of Police, Udippi.
2. D.M.Goveas, Head Constable No.500 of Udippi Police Station.

Counter petitioner : Vaman Bhat.

The petitioners pray for revising the order of the Joint Magistrate, Coondapoor, passed on 31-5-32.

2. 1st petitioner is a Sub Inspector of Police, Udipi, and 2nd petitioner is a Head Constable attached to Udipi Station and as such were acting in the lawful discharge of their duties in dispersing an unlawful assembly on 12-4-1932, in Udipi Town, as contemplated in Section 127 and 128 of the Cr. P.C.

3. The Counter-petitioner was one of the members of an unlawful assembly and sustained injuries when the unlawful assembly was being dispersed by the petitioners on 12-4-1932.

4. The counter petitioner filed a complaint at the petitioners before the Sub-Magistrate, Coondapoor in respect of the injuries sustained by him. The complaint was forwarded to the Circle Inspector of Police, Udipi under Section 202 Cr.P.C. and the Circle Inspector reported that the petitioners were acting under section 127 and 128 of the Cr. P.C. and in dispersing an unlawful assembly and that the counter petitioner sustained injuries then.

5. The Joint Magistrate, Coondapoor, thereupon transferred the case to his own file in his order dated 3-5-1932. Order attached.

6. The petitioners raised the preliminary objection that the case against them cannot be proceeded with for want of sanction of the Local Government as contemplated in Section 132 of the Cr. P.C. as the petitioners were acting in the lawful discharge of their duties in dispersing the unlawful assembly under sections 127 and 128 of the Cr.P.C..

7. The Joint Magistrate, Coondapoor, has rejected the petition in his order dated 31-5-1932 on the ground that it applies only

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in cases where the act complained of is one which on the face of it appears to be done or purported to be done under Chapter XII of the Cr.P.C. In other words the statement of the counter petitioner is prima facie true and the reports of the petitioners are prima facie false.

8. The view of the Joint Magistrate appears to be incorrect. If the view were conceded it would mean that the protection afforded to Police Officers acting in the dispersal of unlawful assemblies by section 132 of the Cr.P.C. would become a nullity and all that would be required would be for persons to file complaints against the Police and keep them continually in court as accused persons. Section 132 CR.P.C. quite clearly lays that the condition precedent to institution of proceedings aganst the Police Officers acting under sections 127 and 128 Cr.P.C. is the sanction of the Local Government.

9. It is therefore prayed that the order of Joint Magistrate, Coondapoor, dismissing the petition may be revised and the complaint thrown out for want of sanction of the Local Government.

Mangalore)
3rd July 1932)

Sd/- --------
Petitioners.

Proceedings of the Joint Magistrate, Coondapoor, dated the 3rd May 1932.

N.A.Arunachalam Esq., M.A., I.C.S.

Transfer of Criminal Cases - C.C.65/32, on the file of the Stationary Sub-Magistrate, Udipi - Orders passed.

Read report N.Ref.C.C. 65/32, dated the 28th April, 1932, from the Stationary Sub-Magistrate, Udipi.

O R D E R

C. C.65/32 istransferred to the file of this court.

Sd/----------
Joint Magistrate,
3rd May 1932.

Law (Genl.) Department.

C.No.3339B. From the D.M. of South Kanara, No.Ref.C-1-6252-32 dated 8.7.32.

Subject: Legal assistance to certain police officers in South Kanara - Revision petition in the High Court - Institution.

A.S.

Attention is invited to section 435 of the Cr.P.C. Although under that section the High Ct. is competent to entertain revision petitions the general rule is that where there are courts of concurrent jurisdiction the remedy should be sought in inferior tribunals, i.e. the D.M. or the Sessions Judge. If the Dist. or the Sessions Judge considers that the order passed by the lower court is not legal or proper he may report the case under sec. 438 of the Code for the orders of the High Ct. which will deal with it under sec. 439. It is not clear why revision petitions are proposed in the present case to the High Ct. direct. The D.P. may perhaps be requested to consult the Public Prosecutor, S. Kanara as to whether they should be made to himself or the Sessions Judge in the first instance or to the High Court direct.

2. If the petitions are to be filed in the High Ct, the next point for consideration is whether the P.P. should be asked to file them on behalf of the police officers. It will be seen that they are the accused in a private complaint and ordinarily in cases where Govt. servants are prosecuted the practice appears to be for a private pleader to defend them. It

does not seem to be usual for the P.P. to appear on their behalf. Further in certain cases the Govt. may not entirely subscribe to the statements of the accused Govt. servants and if ~~xxxx~~ Govt. in its capacity as Crown has to be represented at some subsequent stage in the proceedings e.g. when an application for transfer from a Magistrate's court is made by them - then the services of the Public Prosecutor may not be available to Govt. (If he has appeared for the officers) ~~It is not known whether in the present case the defence of the accused can be undertaken by Govt.~~ Having regard, however, to the considerations mentioned above, it does not appear advisable ~~xx~~ to ask the P.P. to appear on their behalf.

3. It is not clear whether these officers have applied to the D.M. for the employment of counsel on their behalf as required by rules, and, if so, whether he has sanctioned it. If he has done so, he may perhaps be ~~authorised~~ informed that he may authorise the police officers to make their own arrangements for filing the petitions in cases ~~they~~ are to be filed in the High Court subject to a maximum of Rs.50 for each petition. This authorisation will be subject to the usual condition that the question of Govt. bearing the cost of defence or not will be determined after the termination of the case.

4. Pub.(Police) and Pub.(General) may see first instance

DS 21.7.32

IGW 21.7.32

BBC 22/7

S

The Case appears somewhat peculiar. It is not clear whether the Police and the Magistracy have not been working at cross purposes.

S.132 C.P.C. requires sanction of Court for prosecutions for acts purporting to be done under Chap IX. The S.D.M's order in effect limits the scope of protection by defining "purporting" within narrow limits.

The question is whether the word 'purporting' would support a plea of the kind raised by the accused.

(2) 'M' at p. 1 ante

In interlocutory applications, while a trial is proceeding, parties generally resort to the High Court: e.g. to quash a charge framed. Though it is open to parties to apply to the D.M. or the S.J. under S.435 C.P.C., they do not do so, as the latter cannot grant any relief, (except under ss. 436 & 437 C.P.C.) which would

A 1/

be inappropriate to such a case) and, if convinced that the order is not correct, legal or proper, have to report the matter to the High Court under s 438 Cr.P.C.

It is also very unusual for ~~Executive~~ D.M.s or S.Js to take up Suo motu such interlocutory matters.

The Dt. Magrs own views on the merits of the cases are not very clear, either from his report p 1-2 c.s or D.O. to C.S. p. 1 n.s. in linked file.

In the circumstances, it appears better to authorise the accused police officers to make their own arrangements for filing the petitions in the High Court than to sponsor them by entrusting them to the P.P. Madras. 'N' at p. 2 ante

LWO
26/7/32

Pub (Pol.)
Pub (C.S.)

L.Dis 3339B-1
2.7.32.

Pub (Police) Dept

This Department may agree with the suggestion ~~of~~ as above.

2139

ASSISTANT SECRETARY TO GOVT. 27 JUL 1932 CRIMINAL DEPT.

Police

Inspr Pub (P)

ASSISTANT SECRETARY TO GOVT. 29 JUL 1932 CHIEF SECT.

26.7.32.
28/7/32

Public will agree that
Govt should go along
sponsor

WG
30/7.

12

Public (Genl) Dept.

Vide our file linked.

The Law dept was requested to send this file to this dept for reference in connection with certain Leg. Council questions re. the alleged beating by the police of M. M. Rama Rao of Nanguluru. These questions are linked below

This file may be perused & returned to Law

WLG
30/7.

ATCN
2.8.32

Submitted that on the merits this revision petition will probably succeed It is difficult to judge without a copy of the S.D.M's order, but he certainly seems to be wrong if he holds that the accused have to prove that they purported to act under secs. 127-8. It is a contradiction in terms. The D.M. has ample power to take it up suo motu under sec. 435 and report to the High Court under 438 but, if he won't do it, perhaps we may agree with Law Secy.'s suggestion.

2.8.32

CS.

Public will agree that Govt stand in no way [illegible]

by 13 R

the applications. The Police officers should make their own arrangements - who is to bear the cost will presumably depend on the result.

Pub & Law
24524-1
3.8.32

HMB
2.8.32

Law

Law (Gen) dept

29375 93
3/8

AS -

A draft order is submitted for approval. It may be sent to Finance u.o. for acceptance:

NB
4.8.32.

IOW
5.8.32

NS

BR
5/8

✓ Law
5/8/32.

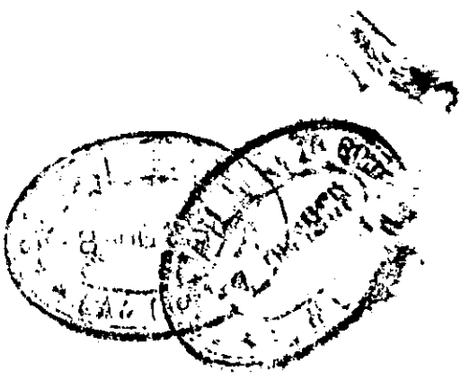
d. Pub & Law 33
6/8/32

Fin.

Fin (ERL)

Accepted.
Law
6/8/32

Law (Genl.)



Maybe circ. to Govts

BR
8/8

Law
9/8/32

C 2. Govts 9.8.32.

Finance 21816 ERL

L&L 3857/B 8.8.32
8.8.32

Sectt. 11-5 (a)

28/11/8

Date. Initials.

When received for Fair-copying. ..

When copied .. 8/11/8

When examined ..

When signed ..

When despatched ..

Ll Law (General) DEPARTMENT.

Legal assistance.

Certain police officers in the South Kanara district - Filing of revision petition in the High Court - Police officers to make their own arrangements -

(1)

READ AGAIN G.O. No. ....., dated 19

" " " " ..... " 19

READ ALSO :—

(M Ref. C.1-6252-32)

C. No. 3339/B From the D.M. of South Kanara, No. ....., dated 8/9/1932

" " ..... " " ..... " ..... " ..... 19 .

" " ..... " " ..... " ..... " ..... 19 .

ORDER.

MB

No. 2972 dated 11. 8. 1932.

The Government consider that the police officers aggrieved by the (preliminary) order of the Sub-Divisional Magistrate (Mangalore) in C.C. No 89 of 1932 on his file and that of the Joint Magistrate, Coondapur, in C.C. No 35 of 1932 on his file should make their own arrangements for filing revision petitions against those orders in the High Court.

2 The DM. of South Kanara is informed that if he has already authorised the police officers under rule 2 of Part III of the Annexure to

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G.O.No. 3470 Law (General) dated 12.9.1931, to engage legal assistance in the cases mentioned above, he may authorise them to employ Counsel in connection with the revision petitions, subject to a maximum fee of Rs 50/- (Rupees fifty only) for each.

3. The question whether the whole or any portion of the costs incurred in connection with the revision petitions will ever finally borne by Govt or not will be determined after the termination of the cases.

N8/4.8.32

ICIV/5.8.32

ppr/5/8

Cno 5/8/32.